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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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JAN 22 P 4:18  
U.S. DISTRICT COURT  
DISTRICT OF MASS.

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MARK E. FEINERSTEIN, Individually and On )  
Behalf of All Others Similarly Situated )  
 )  
Plaintiff, )  
 )  
-against- )  
 )  
MARSH & MCLENNAN COMPANIES, INC, )  
et al., )  
 )  
Defendants. )  
----- )  
MARIA DAGOSTINO-GANNON, Individually and )  
On Behalf of All Others Similarly Situated, )  
 )  
Plaintiff, )  
 )  
-against- )  
 )  
PUTNAM INVESTMENTS TRUST, et al., )  
 )  
Defendants. )  
----- x

Civil Action  
No. 03-12474-MLW

**ORAL ARGUMENT  
REQUESTED**

Civil Action  
No. 03-12475-GAO

**DEFENDANTS' MEMORANDUM OF LAW (i) IN OPPOSITION TO  
PLAINTIFFS' MOTION TO CONSOLIDATE CASES AND APPOINT  
LEAD COUNSEL, AND (ii) IN SUPPORT OF DEFENDANTS' MOTION TO  
STAY PROCEEDINGS PENDING RULING BY THE  
JUDICIAL PANEL ON MULTIDISTRICT LITIGATION**

Putnam Investment Management, LLC, Putnam Investments Trust, Marsh &  
McLennan Companies, Inc., Putnam Investment Funds, and the various named Putnam mutual  
funds (collectively, the "Putnam Defendants") respectfully submit this memorandum of law in  
opposition to Plaintiffs' motion to consolidate the above-captioned cases and to appoint lead  
counsel (the "Plaintiffs' Motion"), and in support of the Putnam Defendants' motion to stay the

consolidate the above-captioned actions<sup>2</sup> and to appoint Cauley Geller Bowman & Rudman LLP and Bernstein Liebhard & Lifshitz, LLP as Co-Lead Counsel.

This Court should defer any decision on Plaintiffs' Motion and should stay all proceedings in the above-captioned cases pending a ruling by the Panel on the Putnam Defendants' MDL Petition, for a number of reasons. First, other plaintiffs who have moved to appoint lead plaintiff and approve lead counsel have voluntarily agreed to stay their motions until the MDL Panel rules.<sup>3</sup> See Stipulation and [Proposed] Order for actions pending in this District (attached hereto as Exhibit A); the Southern District of New York (attached hereto as Exhibit B); and the Northern District of California (attached hereto as Exhibit C).

Second, the above-captioned actions share common questions of law and fact with other Related Actions. The above-captioned actions allege that the Putnam Defendants violated Section 34(b) of the Investment Company Act of 1940 and breached fiduciary duties purportedly owed to Plaintiffs. A number of other Related Actions also allege violations of the Investment Company Act, and at least five allege only such violations.<sup>4</sup> Because the above-captioned

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<sup>2</sup> For the ease of the Court, the Putnam Defendants are responding as a group to plaintiff's Motion, as captioned. In so doing, the Putnam Defendants do not concede that each of them has been served with the complaint in each of the actions included in plaintiffs' caption.

<sup>3</sup> The Putnam Defendants moved to stay decision on the derivative plaintiffs' motion. See Exhibit D (Defendants' Memorandum of Law (i) in Opposition to Motion by Derivative Plaintiffs to Consolidate Derivative Cases and Appoint Lead Counsel, and (ii) in Support of Defendants' Motion to Stay Proceedings Pending Ruling by the Judicial Panel on Multidistrict Litigation).

<sup>4</sup> These include Zuber v. Putnam Investment Management, LLC, No. 03-CV-12175 (D. Mass.); Dubin v. Putnam Investment Management, LLC, No. 03-CV-12209 (D. Mass.); Yameen v. Putnam Investment Management, LLC, No. 03-CV-12222 (D. Mass.); Casey v. Putnam Investment Management, LLC, No. 03-CV-12273 (D. Mass.); and Ioakim v. (continued...)

actions, other pending Investment Company Act-related actions, and the other numerous suits pending against the Putnam Defendants all share common questions of fact and law,<sup>5</sup> this Court should defer decision on the instant motion. The transferee court, once it has all of the cases before it, will be in the best position to consolidate cases, appoint lead counsel, and coordinate discovery and other pretrial proceedings.

Finally, while the Putnam Defendants have requested that all Related Actions be transferred to this District for coordination or consolidation, a small number of plaintiffs have asked that all cases against all mutual fund complexes be transferred to the United States District Court for the Southern District of New York. See, e.g., Piliere Pl.'s Mem. in Opp. to Putnam Defs.' Mot. to Transfer, passim (attached hereto as Exhibit E). Given the possibility that all of the cases against the Putnam Defendants pending in this District could be transferred to another jurisdiction, any decision by this Court on the instant motion would be premature and would waste scarce judicial resources.

### **ARGUMENT**

#### **THE COURT SHOULD STAY PROCEEDINGS, INCLUDING PLAINTIFFS' INSTANT MOTION, PENDING THE RULING BY THE MDL PANEL**

Plaintiffs request that this Court consolidate the above-captioned actions and any other subsequently-filed related actions. See Pls.' Mot. at 2-3; Proposed Pretrial Order No. 1 at 3-4. This Court should stay all proceedings in the actions, including plaintiffs' request to consolidate and to appoint lead counsel, pending a ruling by the MDL Panel.

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<sup>4</sup> (...continued)  
Putnam Investment Management, LLC, No. 03-CV- 12402 (D. Mass.).

<sup>5</sup> Plaintiffs acknowledge as much by their service list, which includes counsel for other Related Actions pending in this and other districts.

**I. Federal Courts Routinely Stay Actions Pending Rulings by the MDL Panel**

Federal courts have the inherent power to stay the proceedings before them. See Rivers v. Walt Disney Co., 980 F. Supp. 1358, 1360 (C.D. Cal. 1997). In exercising this power, a "majority of [federal] courts have concluded that it is . . . appropriate to stay preliminary pretrial proceedings while a motion to transfer and consolidate is pending with the MDL Panel because of the judicial resources that are conserved." Id. at 1362; see also U.S. Bank, Nat'l Ass'n v. Royal Indem. Co., No. CIV.A.3:02-CV-0853-P, 2002 WL 31114069, at \*2 (N.D. Tex. Sept. 23, 2002) (staying proceedings pending ruling by MDL Panel); Peckler v. Citigroup, Inc., No. 00-10055-REK (D. Mass June 28, 2000) (order granting stay of proceedings pending ruling by MDL Panel "as a prudential measure") (a copy of this Memorandum and Order is attached hereto as Exhibit F); Aikins v. Microsoft Corp., No. CIV.A.00-0242, 2000 WL 310391, at \*1 (E.D. La. Mar. 24, 2000) (staying proceedings pending ruling by MDL Panel).

Courts favor stays pending rulings by the MDL Panel because the litigation of overlapping claims in multiple forums imposes undue costs on the litigants, wastes scarce judicial resources, and leads to duplicative and inconsistent results. See, e.g., U.S. Bank, 2002 WL 31114069, at \*2 (granting stay because "[i]f the MDL Motion is granted, all of the Court's time, energy, and acquired knowledge regarding this action and its pretrial procedures will be wasted"). This is true even where, as in this case, defendants seek a stay after plaintiffs have filed a motion for some form of pretrial relief. For example, in Hertz Corp. v. Gator Corp., 250 F. Supp. 2d 421 (D.N.J. 2003), the court stayed the proceedings, including plaintiff's earlier-filed motion for a preliminary injunction, until the MDL Panel issued its ruling in order to prevent the waste of the court's time and resources that otherwise would have resulted. Id. at 428.

## II. Any Decision on Plaintiffs' Motion Should Await the Ruling by the MDL Panel

Plaintiffs will not suffer any prejudice from staying the above-captioned actions until the Panel has ruled on the MDL Petition. Because any stay would remain in place only until the Panel rules, there should be no extended delay. See, e.g., Republic of Venezuela v. Philip Morris Cos., No. 99-0586-CIV, 1999 U.S. Dist. LEXIS 22742, at \*6 (S.D. Fla. Apr. 28, 1999) (holding that the "brief stay" pending the MDL Panel's decision would not prejudice plaintiff); see also Register v. Bayer Corp., No. Civ. A. 02-1013, 2002 WL 1585513, at \*1 (E.D. La. July 16, 2002) (holding that plaintiff would not be prejudiced by a temporary stay until the MDL Panel's decision); Tench v. Jackson Nat'l Life Ins. Co., No. 99 C 5182, 1999 WL 1044923, at \*2 (N.D. Ill. Nov. 12, 1999) (holding that plaintiff would suffer no prejudice by "stay . . . for only the limited period" until the MDL Panel ruled on the request to transfer); Portnoy v. Zenith Labs., No. 86-3512, 1987 WL 10236, at \*1 (D.D.C. Apr. 21, 1987) (granting stay where plaintiffs would not be prejudiced by "a short-term stay"). There is no reason to expect that the Panel will not rule on the MDL Petition shortly after it hears argument on January 29.

In contrast, in the absence of a stay, the Putnam Defendants risk multiple proceedings on the same issues. Indeed, devoting time to the consolidation of these cases and other matters at this time would be a waste of scarce judicial resources, particularly when there are other similar actions pending against the same defendants, and when all of the Related Actions could be transferred to another district. Such circumstances greatly favor a stay, and the cases so recognize. See, e.g., Aikins, 2000 WL 310391, at \*1 (reasoning that stay pending MDL Panel decision was warranted because defendant "would suffer a considerable hardship and inequity if forced to simultaneously litigate multiple suits in multiple courts" as well as "poten-

tially suffer conflicting rulings by different judges"); accord Am. Seafood, Inc. v. Magnolia Processing, Inc., Civ. A. Nos. 92-1030, 92-1086, 1992 WL 102762, at \*2 (E.D. Pa. May 7, 1992) ("The duplicative motion practice . . . demonstrate[s] that judicial economy and prejudice to the defendants weigh heavily in favor of the stay."); see also Rosenfeld v. Hartford Fire Ins. Co., Nos. 88 CIV. 2153, 88 CIV. 2252, 1988 WL 49065, at \*1 (S.D.N.Y. May 12, 1988) (holding that stays pending decision by MDL Panel were "warranted . . . to further the underlying purposes of coordination of multidistrict litigation").

Plainly, given the sheer number of Related Actions, any brief pause in the proceedings here is greatly outweighed by the benefits of coordinated litigation of the Related Actions. Indeed, the stay of these cases, and eventual consolidation of all Related Actions, undoubtedly will facilitate a swifter resolution of all of the litigation. See Rosenfeld, 1988 WL 49065, at \*2; see also In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Litig., 990 F. Supp. 834, 836 (J.P.M.L. 1998) (noting "economies of scale" that all parties will gain from consolidation); In re Stirling Homex Corp. Sec. Litig., 405 F. Supp. 314, 316 (J.P.M.L. 1975) (noting that plaintiffs will "experience a net savings of time, effort and expenses" through consolidation).

### **CONCLUSION**

For all of the foregoing reasons, any decision on Plaintiffs' Motion should be deferred and the above-captioned actions all should be stayed pending resolution of Putnam's MDL Petition.


### **REQUEST FOR ORAL ARGUMENT**

Pursuant to Local Rule 7.1(D), the Putnam Defendants respectfully request oral argument of this motion.

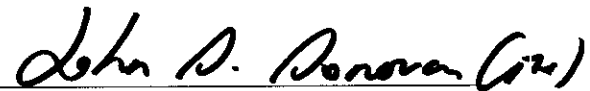
Dated: January 22, 2004  
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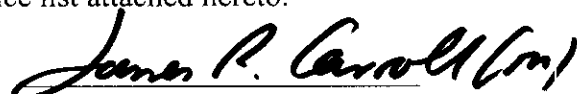
  
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**CERTIFICATE OF SERVICE**

I, James R. Carroll, hereby certify that on January 22, 2004, I caused a true copy of the foregoing document to be served by first class mail, postage prepaid, upon counsel of record for each other party as indicated on the service list attached hereto.

Dated: January 22, 2004

  
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